



Billing Code: 3510—DP—P

## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### 15 CFR Part 6

[Docket No. 181218999—8999—01]

RIN 0605-AA50

### Civil Monetary Penalty Adjustments for Inflation

**AGENCY:** Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

**ACTION:** Final rule.

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**SUMMARY:** This final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, required the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 which provided for initial catch up adjustments for inflation in 2016, and requires adjustments for inflation to CMPs under a revised methodology for each year thereafter. The 2018 adjustments for inflation to CMPs to the Department of Commerce's CMPs were published in the **Federal Register** on January 8, 2018, and became

effective January 15, 2018. The annual methodology provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. Agencies' annual adjustments for inflation to CMPs shall take effect not later than January 15. The Department of Commerce's 2019 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. The Department of Commerce's 2019 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

**DATES:** This rule is effective March 1, 2019.

**FOR FURTHER INFORMATION, CONTACT:** Stephen M. Kunze, Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482-1207, Department of Commerce, 1401 Constitution Avenue NW, Room D200, Washington, DC 20230. The Department of Commerce's Civil Monetary Penalty Adjustments for Inflation are available for downloading from the Department of Commerce, Office of Financial Management's web site at the following address: [http://www.osec.doc.gov/ofm/OFM\\_Publications.html](http://www.osec.doc.gov/ofm/OFM_Publications.html).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), provided for agencies' adjustments for inflation to CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,
2. Is assessed or enforced by an agency pursuant to Federal law; and,

3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74) further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment (1) required agencies to adjust the CMP levels in effect as of November 2, 2015, with initial catch up adjustments for inflation through a final rulemaking to take effect no later than August 1, 2016; and (2) requires agencies to make subsequent annual adjustments for inflation to CMPs that shall take effect not later than January 15. The Department of Commerce's 2018 adjustments for inflation to CMPs were published in the **Federal Register** on January 8, 2018, and the new CMP levels became effective January 15, 2018.

The Department of Commerce's 2019 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These 2019 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of the Department of Commerce. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing CMPs for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the CMPs. The CMP ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate CMP to assess for a particular violation. The Penalty Policy is maintained and made available to the public on NOAA's Office of the General Counsel, Enforcement Section web site at: <http://www.gc.noaa.gov/enforce-office.html>.

The Department of Commerce's 2019 adjustments for inflation to CMPs set forth in this regulation were determined pursuant to the methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act

Improvements Act of 2015, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term “cost-of-living adjustment” is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the 2019 adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage for each CMP by which the Consumer Price Index for the month of October 2018 exceeds the Consumer Price Index for the month of October 2017.

## **Classification**

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Commerce is charged only with performing ministerial computations to determine the dollar amounts of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment are not required for this rule.

## **Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

## **Regulatory Analysis**

*E.O. 12866, Regulatory Review*

This rule is not a significant regulatory action as that term is defined in Executive Order 12866.

## *Regulatory Flexibility Act*

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility act (5 U.S.C. 601, et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

## **List of Subjects in 15 CFR Part 6**

Civil monetary penalties, Law enforcement.

Dated: December 21, 2018.

**Stephen M. Kunze,**

*Deputy Chief Financial Officer and Director for Financial Management, Department of Commerce.*

## **Authority and Issuance**

- For the reasons stated in the preamble, the Department of Commerce revises 15 CFR part 6 to read as follows:

## **PART 6—CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION**

Sec.

- 6.1 Definitions.
- 6.2 Purpose and scope.
- 6.3 Adjustments for inflation to civil monetary penalties.
- 6.4 Effective date of adjustments for inflation to civil monetary penalties.
- 6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

**Authority:** Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104-134, 110 Stat. 1321 (31 U.S.C. 3701 note); Sec. 701 of Pub. L. 114-74, 129 Stat. 599 (28 U.S.C. 1 note; 28 U.S.C. 2461 note).

## **§ 6.1 Definitions.**

(a) The *Department of Commerce* means the United States Department of Commerce.

(b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and

(2) Is assessed or enforced by an agency pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

## **§ 6.2 Purpose and scope.**

The purpose of this part is to make adjustments for inflation to civil monetary penalties, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74), of each civil monetary penalty provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce).

## **§ 6.3 Adjustments for inflation to civil monetary penalties.**

The civil monetary penalties provided by law within the jurisdiction of the Department of Commerce, as set forth in paragraphs (a) through (f) of this section, are hereby adjusted for inflation in 2019 in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, from the amounts of such civil monetary penalties that were in effect as of January 15, 2018, to the amounts of such civil monetary penalties, as thus adjusted. The year stated in parenthesis represents the year that the civil monetary penalty was last set by law or adjusted by law (excluding adjustments for inflation).

(a) *United States Department of Commerce.* (1) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from \$11,181 to \$11,463.

(2) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from \$11,181 to \$11,463.

(3) 31 U.S.C. 3729(a)(1)(G), False Claims Act (1986); violation, minimum from \$11,181 to \$11,463; maximum from \$22,363 to \$22,927.

(b) *Bureau of Industry and Security*. (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act (1990), violation, maximum from \$46,192 to \$47,357.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$37,601 to \$38,549.

(3) 22 U.S.C. 6761(a)(l)(B), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$7,520 to \$7,710.

(4) 50 U.S.C. 1705(b), International Emergency Economic Powers Act (2007), violation, maximum from \$295,141 to \$302,584.

(5) 22 U.S.C. 8142(a), United States Additional Protocol Implementation Act (2006), violation, maximum from \$30,557 to \$31,328.

(6) 50 U.S.C. 4819, Export Controls Act of 2018 (2018), (new penalty), violation, maximum \$300,000.

(c) *Census Bureau*. (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics (2002), each day's delinquency of a violation; total of not to exceed maximum violation, from \$1,360 to \$1,394; maximum per violation, from \$13,605 to \$13,948.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics (2002), violation, maximum from \$13,605 to \$13,948.

(d) *Economics and Statistics Administration*. (1) 22 U.S.C. 3105(a), International Investment and Trade in Services Act (1990); failure to furnish information, minimum from \$4,619 to \$4,735; maximum from \$46,192 to \$47,357.

(e) *International Trade Administration*. (1) 19 U.S.C. 81s, Foreign Trade Zone (1934), violation, maximum from \$2,852 to \$2,924.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada FTA Protective Order (1988), violation, maximum from \$205,211 to \$210,386.

(f) *National Oceanic and Atmospheric Administration*. (1) 51 U.S.C. 60123(a), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from \$11,278 to \$11,562.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from \$11,278 to \$11,562.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), violation, maximum from \$236,114 to \$242,069.

(4) 16 U.S.C. 783, Sponge Act (1914), violation, maximum from \$1,686 to \$1,729.

(5) 16 U.S.C. 957(d), (e), and (f), Tuna Conventions Act of 1950 (1962):

(i) Violation of 16 U.S.C. 957(a), maximum from \$84,264 to \$86,389.

(ii) Subsequent violation of 16 U.S.C. 957(a), maximum from \$181,493 to \$186,070.

(iii) Violation of 16 U.S.C. 957(b), maximum from \$2,852 to \$2,924.

(iv) Subsequent violation of 16 U.S.C. 957(b), maximum from \$16,853 to \$17,278.

(v) Violation of 16 U.S.C. 957(c), maximum from \$362,986 to \$372,141.

(6) 16 U.S.C. 957(i), Tuna Conventions Act of 1950,<sup>1</sup> violation, maximum from \$184,767 to \$189,427.

(7) 16 U.S.C. 959, Tuna Conventions Act of 1950,<sup>2</sup> violation, maximum from \$184,767 to \$189,427.

(8) 16 U.S.C. 971f(a), Atlantic Tunas Convention Act of 1975,<sup>3</sup> violation, maximum from \$184,767 to \$189,427.

(9) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988 (1988), violation, maximum from \$513,026 to \$525,965.

(10) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983 (1983), violation, maximum from \$24,421 to 25,037.

(11) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1972), violation, maximum from \$28,520 to \$29,239.

(12) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act,<sup>4</sup> violation, maximum from \$184,767 to \$189,427.

(13) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), violation, maximum from \$173,951 to \$178,338.

(14) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:

(i) Violation as specified (1988), maximum from \$51,302 to \$52,596.

(ii) Violation as specified (1988), maximum from \$24,625 to \$25,246.

(iii) Otherwise violation (1978), maximum from \$1,686 to \$1,729.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from \$184,767 to \$189,427.



(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,<sup>5</sup> violation, maximum from \$184,767 to \$189,427.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,<sup>6</sup> violation, maximum from \$184,767 to \$189,427.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from \$26,409 to \$27,075.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from \$660 to \$677.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,<sup>7</sup> violation, maximum from \$184,767 to \$189,427.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,<sup>8</sup> violation, maximum from \$184,767 to \$189,427.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from \$1,118 to \$1,146; maximum from \$11,181 to \$11,463.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,<sup>9</sup> violation, maximum from \$184,767 to \$189,427.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,<sup>10</sup> violation, maximum from \$184,767 to \$189,427.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,<sup>11</sup> violation, maximum from \$184,767 to \$189,427.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from \$160,484 to \$164,531.

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,<sup>12</sup> violation, maximum from \$184,767 to \$189,427

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,<sup>13</sup> violation, maximum from \$184,767 to \$189,427.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,<sup>14</sup> violation, maximum from \$184,767 to \$189,427.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from \$28,520 to \$29,239.

(ii) Subsequent violation, maximum from \$84,264 to \$86,389.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from \$72,718 to \$74,552.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from \$72,718 to \$74,552.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012,<sup>15</sup> violation, maximum from \$184,767 to \$189,427.

(33) 16 U.S.C. 7407(b), Port State Measures Agreement Act of 2015,<sup>16</sup> violation, maximum from \$184,767 to \$189,427.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act,<sup>17</sup> violation, maximum from \$184,767 to \$189,427.

(35) 16 U.S.C. 7705, Ensuring Access to Pacific Fisheries Act,<sup>18</sup> violation, maximum from \$184,767 to \$189,427.

(36) 16 U.S.C. 7805, Ensuring Access to Pacific Fisheries Act,<sup>19</sup> violation, maximum from \$184,767 to \$189,427.

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<sup>1</sup>This National Oceanic and Atmospheric Administration maximum civil monetary penalty, as prescribed by law, is the maximum civil penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

<sup>2</sup> See footnote 1.

<sup>3</sup> See footnote 1.

<sup>4</sup> See footnote 1.

<sup>5</sup> See footnote 1.

<sup>6</sup> See footnote 1.

<sup>7</sup> See footnote 1.

<sup>8</sup> See footnote 1.

<sup>9</sup> See footnote 1.

<sup>10</sup> See footnote 1.

<sup>11</sup> See footnote 1.

<sup>12</sup> See footnote 1.

<sup>13</sup> See footnote 1.

<sup>14</sup> See footnote 1.

<sup>15</sup> See footnote 1.

<sup>16</sup> See footnote 1.

<sup>17</sup> See footnote 1.

<sup>18</sup> See footnote 1.

<sup>19</sup> See footnote 1.

#### **§ 6.4 Effective date of adjustments for inflation to civil monetary penalties.**

The Department of Commerce's 2019 adjustments for inflation made by § 6.3, of the civil monetary penalties there specified, are effective on March 1, 2019, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.3, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to March 1, 2019 as provided in § 6.5.

#### **§ 6.5 Subsequent annual adjustments for inflation to civil monetary penalties.**

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to the Department of Commerce's civil monetary penalties annually, which shall take effect not later than January 15, notwithstanding section 553 of title 5, United States Code.

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